

Required by law means a mandate contained in law that compels an entity to make a use or disclosure of protected health information and that is enforceable in a court of law. *Required by law* includes, but is not limited to, court orders and court-ordered warrants; subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of information; a civil or an authorized investigative demand; Medicare conditions of participation with respect to health care providers participating in the program; and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing public benefits.

[68 FR 8374, Feb. 20, 2003, as amended at 74 FR 42767, Aug. 24, 2009]

§ 164.104 Applicability.

(a) Except as otherwise provided, the standards, requirements, and implementation specifications adopted under this part apply to the following entities:

(1) A health plan.

(2) A health care clearinghouse.

(3) A health care provider who transmits any health information in electronic form in connection with a transaction covered by this subchapter.

(b) When a health care clearinghouse creates or receives protected health information as a business associate of another covered entity, or other than as a business associate of a covered entity, the clearinghouse must comply with § 164.105 relating to organizational requirements for covered entities, including the designation of health care components of a covered entity.

[68 FR 8375, Feb. 20, 2003]

§ 164.105 Organizational requirements.

(a)(1) *Standard: Health care component.* If a covered entity is a hybrid entity, the requirements of subparts C and E of this part, other than the requirements of this section, § 164.314, and § 164.504, apply only to the health care component(s) of the entity, as specified in this section.

(2) Implementation specifications:

(i) *Application of other provisions.* In applying a provision of subparts C and E of this part, other than the requirements of this section, § 164.314, and § 164.504, to a hybrid entity:

(A) A reference in such provision to a “covered entity” refers to a health care component of the covered entity;

(B) A reference in such provision to a “health plan,” “covered health care provider,” or “health care clearinghouse,” refers to a health care component of the covered entity if such health care component performs the functions of a health plan, health care provider, or health care clearinghouse, as applicable;

(C) A reference in such provision to “protected health information” refers to protected health information that is created or received by or on behalf of the health care component of the covered entity; and

(D) A reference in such provision to “electronic protected health information” refers to electronic protected health information that is created, received, maintained, or transmitted by or on behalf of the health care component of the covered entity.

(ii) *Safeguard requirements.* The covered entity that is a hybrid entity must ensure that a health care component of the entity complies with the applicable requirements of this section and subparts C and E of this part. In particular, and without limiting this requirement, such covered entity must ensure that:

(A) Its health care component does not disclose protected health information to another component of the covered entity in circumstances in which subpart E of this part would prohibit such disclosure if the health care component and the other component were separate and distinct legal entities;

(B) Its health care component protects electronic protected health information with respect to another component of the covered entity to the same extent that it would be required under subpart C of this part to protect such information if the health care component and the other component were separate and distinct legal entities;